UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

G4S SECURE SOLUTIONS (USA) INC., etc.

:

and

Case 12-CA-26644

THOMAS FRAZIER, an individual

Case 12-CA-26811

CECIL MACK, an individual

RESPONDENT'S ANSWERING BRIEF TO CROSS-EXCEPTIONS

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board, Respondent hereby files its Answering Brief to Acting General Counsel's Cross-Exceptions to The Administrative Law Judge's Supplemental Decision.

I. Statement of Case

On December 21, 2012, Respondent filed Exceptions to the Supplemental Decision of the Administrative Law Judge ("ALJ"). On January 11, 2013, Acting Counsel for General Counsel ("General Counsel") filed an Answering Brief and Cross-Exceptions. In her Cross-Exceptions, General Counsel excepts to (1) the ALJ's failure to find that the alleged discriminatees were suspended because they engaged in protected concerted activity and to discourage others from engaging in such activities, (2) the ALJ's failure to require Respondent to make revised reports to the Social Security Administration regarding any backpay award, and (3) the ALJ's failure to require Respondent to reimburse the alleged discriminatees for excess taxes potentially paid as a result of a lump sum award.

II. General Counsel's Cross-Exceptions are Without Merit

Respondent has implicitly addressed General Counsel's exceptions regarding the alleged discriminatees' suspensions. For the reasons set forth in <u>Respondent's Exceptions to the</u>

Supplemental Decision of the Administrative Law Judge, the suspension of the alleged discirminatees had no nexus to participation in protected concerted activity. Moreover, and as also shown in Respondent's Exceptions to the Supplemental Decision of the Administrative Law Judge, Respondent has established that the alleged discriminatees would have been suspended in the absence of participation in protected concerted activity. For these reasons and those set forth in Respondent's Brief in Support of Exceptions to the Supplemental Decision of the Administrative Law Judge, this portion of General Counsel's Cross-Exceptions is without merit and should be denied.

General Counsel's Cross-Exceptions regarding the remedy in this case also are without merit. In support of her exceptions, General Counsel relies on Latino Express, 359 NLRB No. 44 (December 12, 2012). This case was issued on December 12, 2012, more than two months after the instant decision was rendered. While the Board ordered that Latino Express be applied to pending cases, as a matter of equity and due process, retroactive application should only apply to cases that were pending before an ALJ to afford the parties an opportunity to brief and address the issues appropriately. Here, Judge Cates had already issued his Supplemental Order, and retroactive application would be unjust at this late stage of the proceedings. Moreover, the nominal impact of the Board's proposed remedies does not justify the burden they would impose on respondents. Indeed, the Latino Express remedy would require respondents to wait as much as a full year before they could compute additional damages. Further, it is unrealistic to expect respondents to wait to compute additional monies due, and, in addition, to charge respondents interest while doing so.

Finally, <u>Latino Express</u> was issued without a proper Board quorum. <u>See Noel Canning v. NLRB</u>, Case No. 12-1115 (D.C. Cir. January 25, 2013). For this reason, <u>Latino Express</u> and the

remedies set forth therein are invalid, not controlling and may not be applied here. Likewise, the Board's decision below finding that the alleged discriminatees were not supervisors also is invalid. Indeed, the Board as currently constituted does not have jurisdiction to entertain the instant case.

For these reasons and those set forth in <u>Respondent's Brief in Support of Exceptions to</u>
the <u>Supplemental Decision of the Administrative Law Judge</u>, General Counsel's CrossExceptions to the ALJ's proposed remedy are without merit and should be denied.

This 25th day of January, 2013.

Respectfully submitted,

By: /s/ Jonathan J. Spitz

Edward M. Cherof Georgia Bar No. 123390 Jonathan J. Spitz

Georgia Bar No. 672360 JACKSON LEWIS LLP

1155 Peachtree Street, N.E., Suite 1000

Atlanta, Georgia 30309-3600 Telephone: (404) 525-8200 Facsimile: (404) 525-1173 <u>cherofe@jacksonlewis.com</u> spitzj@jacksonlewis.com

AND

Fred Seleman
Managing Counsel – Labor Relations
G4S Secure Solutions (USA) Inc.
1395 University Boulevard
Jupiter, Florida 33458

Telephone: 561-691-6582 Facsimile: 561-691-6680 fred.seleman@usa.g4s.com

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

G4S SECURE SOLUTIONS (USA) INC., etc.

.

and : Case 12-CA-26644

THOMAS FRAZIER, an individual : Case 12-CA-26811

Case 12-CA-20011

CECIL MACK, an individual

CERTIFICATE OF SERVICE

On January 25, 2013, the foregoing **RESPONDENT'S ANSWERING BRIEF TO CROSS-EXCEPTIONS** was filed electronically and a copy served by way of electronic mail on Shelley B. Plass, Counsel for the Acting General Counsel, at shelley.plass@nlrb.gov; Thomas Frazier at fraziertom@gmail.com, Cecil Mack at cecilmack3@gmail.com, and Chief Administrative Law Judge William N. Cates via facsimile to 404-331-2061.

Dated this 25th day of January, 2013.

By: /s/ Jonathan J. Spitz

Jonathan J. Spitz Georgia Bar No. 672360 spitzj@jacksonlewis.com